

**LETTER OPINION**  
**2005-L-33**

October 11, 2005

The Honorable David Weiler  
State Representative  
526 Munich Dr  
Bismarck, ND 58504-7037

Dear Representative Weiler:

Thank you for requesting my opinion on how the new no smoking laws affect private or fraternal clubs. It is my opinion private and fraternal clubs are subject to the smoking prohibition found in N.D.C.C. § 23-12-10(1) unless one of the exemptions in N.D.C.C. § 23-12-10(2) applies to a particular area within a club. Whether an exemption would apply in any given instance depends on the specific facts in each case.

**ANALYSIS**

Senate Bill 2300 (S.B. 2300) was passed during the 2005 legislative session. 2005 N.D. Sess. Laws ch. 239. S.B. 2300 made significant modifications to N.D.C.C. §§ 23-12-09, 23-12-10, 23-12-10.2, and 23-12-11, and enacted two new sections, N.D.C.C. §§ 23-12-10.3 and 34-06-03.2, all of which relate to new restrictions on smoking in public places and places of employment in North Dakota. 2005 N.D. Sess. Laws ch. 239. Section 23-12-10(1), N.D.C.C., now prohibits smoking in all enclosed areas of public places and places of employment except for those listed in N.D.C.C. § 23-12-10(2).

“‘Public place’ means an enclosed area to which the public has access or in which the public is permitted.” N.D.C.C. § 23-12-09(9). “‘Place of employment’ means an area under the control of a public or private employer that employees normally frequent during the course of employment . . . .” N.D.C.C. § 23-12-09(8) (emphasis added). “‘Employee’ means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.” N.D.C.C. § 23-12-09(3).

The above definitions provide broad coverage for the smoking prohibition found in N.D.C.C. § 23-12-10(1). All places where the public has access or is permitted and all places where paid or volunteer employees are employed by either a public or private employer are subject to the smoking prohibition unless one of the exceptions in N.D.C.C. § 23-12-10(2) applies. Although one or more of the exceptions may apply to certain areas

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of fraternal or private clubs,<sup>1</sup> none of them generally applies to fraternal or private clubs. Accordingly, it is my opinion private and fraternal clubs are subject to the smoking prohibition found in N.D.C.C. § 23-12-10(1) unless one of the exemptions in N.D.C.C. § 23-12-10(2) applies to a particular area within a club. Whether an exemption would apply in any given instance depends on the specific facts in each case.

Sincerely,

Wayne Stenehjem  
Attorney General

sam/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

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<sup>1</sup> For example, the club may allow smoking if one of the N.D.C.C. § 23-12-10(2) exceptions applies, such as if the club has a bar, or leases a specific space for private functions from which the general public and children are excluded.